

United States District Court
Western District of Texas
Austin Division

Jerome Schmidt,
Plaintiff,

v.

United States of America
Defendant.

No. 1:18-CV-00088-DAE

DEFENDANT'S ADVISORY TO THE COURT

On this 30th day of April, 2020, the Defendant, United States of America, pursuant to the Court's instruction given in its Order (Dkt. No. 113) elects to call Dr. Julio Chalela, its retained Board Certified neurologist, for additional testimony on the issues raised by the Court. If the Court will permit.

The United States has spoken to Dr. Chalela as to the dates of June 2-4, 2020 given by the Court. He has informed that he is unavailable because of a previously committed work schedule but could be available the next day on June 5, 2020, if the Court would permit his testimony via live video teleconferencing for direct and cross-examination. The government respectfully asks if the Court would allow such testimony by these means and time because of the extraordinary circumstances presented by the COVID-19 pandemic and the uncertainties and potential hazards involving current air travel and to insure the health of all parties involved. The attorneys could present live in person, with Dr. Chalela by video.

Alternatively, if the Court's schedule does not permit this day for testimony, then the government humbly asks if the Court would consider an alternative date in the Court's schedule and Dr. Chalela's work schedule to accommodate this testimony, either live or by video if necessary. By way of background, Dr. Chalela had initially blocked out a work schedule to come to testify but the matter was continued. He blocked out his schedule a second time and did

in fact come live to the Court and testify. We are now asking him to block out his schedule a third time to provide the testimony which the government believes is important to the Court and the defense.

WHEREFORE, PREMISES CONSIDERED, the United States elects to present additional testimony through one expert witness and respectfully asks the Court to be allowed to present the testimony of Dr. Chalela, its retained Board Certified neurologist, in the manner described because of the extraordinary conditions presented by COVID-19's pandemic.

Respectfully submitted,

John F. Bash
United States Attorney

By: /s/ James F. Gilligan

James F. Gilligan
Assistant United States Attorney
Texas Bar No. 07941200
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7100 (phone)
(210) 384-7276 (fax)
James.gilligan@usdoj.gov

Kristina S. Baehr
Assistant United States Attorney
Texas Bar No. 24080780
903 San Jacinto, Suite 334
Austin, Texas 78701
(512) 916-5858 (phone)
(512) 916-5854 (fax)
Kristina.baehr@usdoj.gov
Kristina S. Baehr

Attorneys for Defendant

Certificate of Service

I certify that on April 30, 2020, I electronically filed this document with the Clerk of Court using the CM/ECF system.

☒ The CM/ECF system will send notification to the following CM/ECF participant(s):

Jamal K. Alsafar (jalsaffar@nationaltriallaw.com)

Tom Jacobs (tjacobs@nationaltriallaw.com)

Henry Moore (henry@moorelegal.net)

/s/James F. Gilligan

James F. Gilligan

Assistant United States Attorney